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FOR L/UNA: TBUCHWALD AND L/LEI: LJACOBSON

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SUBJECT: LEBANESE LEGAL DELEGATION LEAVES NEW YORK WITH PLAN

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Classified By: Ambassador Jackie Sanders for Reasons 1.4(b) and 1.4(d).

11. Summary. Department lawyers and USUN Political and Legal Officers met again (reftel) March 2 with the Lebanese Tribunal team to review the status of planning for the prosecution of those responsible for the Hariri assassination. The team was about to return to Beirut after concluding a series of meetings with UN Legal Office lawyers. They indicated that they had also met with French and Russian Mission Legal Advisers, and admitted that French political analysis of what was possible in the Security Council had influenced their thinking. Both the Lebanese team, and the UN team with whom we met later, said that the talks had been highly productive and an excellent start to further talks which they expect will follow. After almost a week of consultations with the UN and with us, they have moved from a Beirut-centric preference for an international tribunal set up by a Chapter VII Security Council resolution to support for a Special Court for Lebanon established by a treaty between the UN and the GOL that has been ratified by the Lebanese Parliament. They envision the Tribunal would have some international components. This process ideally would be book-ended by two UNSCRs -- the first to instruct the UN to negotiate a treaty with the GOL and the second to compel international cooperation with the Tribunal once established. Their plan would also enable the Tribunal to utilize and build on work already underway in the International Independent Investigation Commission (UNIIC). They stressed the need for an efficient Tribunal and are returning to Lebanon with a clear plan and timetable to propose to the Prime Minister. End Summary.

12. Ralph Riachy, Chief Justice of Lebanon's Supreme Court, and Choucri Sader, President of the Legislative Service of Lebanon's Ministry of Justice, said that after three days of consultations with the UN Lebanon Tribunal team they were now "one team" looking for the most efficient way to establish the Tribunal. They said that they had come to New York with instructions from their government to discuss a Yugoslav type Tribunal to be established by the Security Council under Chapter VII but were now convinced that it would be more efficient and feasible to establish a Special Tribunal. The Tribunal would be established through an act to be adopted by the Lebanese parliament that would bring into force as part of Lebanese law the terms of an agreement that would be negotiated with the UN. A Security Council resolution would authorize the Secretary General to negotiate the agreement and a subsequent resolution would require co-operation with the Court. During the course of the week, the Lebanese had moved to a characterization of the court as a "special

Lebanese Tribunal" with international components (as opposed to a truly "international court"). Under the regime that they anticipated establishing, the applicable substantive law would be existing Lebanese law. The Secretary General would appoint the Prosecutor and judges. Lebanese judges would be selected from a roster provided by the Lebanese Supreme Council of the Judiciary. The Prosecutor and majority of the judges would be non-Lebanese, and the Court would be located abroad.

¶3. Under the concept presented by Riachy and Sader, the prosecutor would build on the investigative phase of work which has been begun by the UNIIIC. The second phase would begin with the appointment of a Prosecutor and the transformation of the UNIIIC into a judicial investigative body under his direction, with provisions allowing the special court to utilize evidence that had been developed by UNIIIC. As part of an effort to help lower costs, only when ready to move to the next phase, the trial, would the judges (3 trial, 5 appellate) start work. This arrangement, they said, would be efficient and cost effective.

¶4. The Lebanese team envisioned the following steps and time line:

- Per UNSCR 1644, the Secretary-General would produce a report for the Security Council in mid-March which would describe the plan and elements for the Tribunal. The report would present a framework, not an agreement. The timing of the release of the report, shortly after Brammertz's March 16 briefing to the Council, would be designed to sustain political momentum in the wake of what is expected to be an inclusive and interim UNIIIC report.
- The Security Council would adopt a resolution authorizing the Secretary General to negotiate an agreement with the Lebanese government specifying key elements of the agreement.
- The UN would dispatch a negotiating team with the objective of producing an agreement by April.
- The Lebanese Parliament would take action on the agreement during April and May.
- The Security Council would adopt a subsequent resolution which would require cooperation with the Court under Chapter VII. This should be adopted before the June 15 expiration of the UNIIIC's mandate.

¶5. Both the Lebanese and UN teams mentioned a number of legal issues that must be resolved and shared their thinking on some of them. They said they plan one trial for all defendants, on the theory that the Hariri assassination was one event. Recalling the other assassinations or attempted assassinations, the Lebanese suggested that a focus on Hariri was appropriate as they were confronting a "serial killer." They want to ensure that the Court has personal jurisdiction which will permit prosecution of non-Lebanese. They anticipate that the agreement will have to address questions of immunity, amnesty and pardon.

- Lebanese law would apply. The crimes that would be included in the agreement were crimes under Lebanese law at the time of the event. It may be necessary to modify or draft new rules of procedure and evidence. The single trial will include both present and absent defendants and thus the trial could be completed even if some are tried in absentia.
- There has been no decision regarding the location of the Tribunal but it must be outside Lebanon because of security concerns and should not be in the territory of a P-5 member. Close proximity to Lebanon would be a plus. Cyprus was mentioned as a possibility, though they made clear it would not be viable to use the UK facility (or Sovereign Base Area).
- They anticipate the need for an agreement with the Host

state. (UN lawyers indicated that the Lockerbie agreement could be a useful model.)

- Costs will be reduced by using the UNIIIC's work product and phasing in the creation of the Court. Since the Tribunal is not a subsidiary body of a UN organ, it would not be financed from the UN budget. They envision that the funding would be voluntary and indicated that Lebanon would be prepared to contribute an equitable share. They did not expect that this court would have difficulties in finding donors to support it, and specifically suggested that they thought funding would be forthcoming from other Arab states. (Note: U.S. side highlighted the importance of dealing with the cost issue in a way that prevents it from becoming an impediment to building support for the Court; and emphasized the importance of identifying funding for the Court in advance, and in a way that makes others comfortable that funds promised would actually be forthcoming. End Note.)

¶6. Comment: Although we made excellent progress during the course of the week, there are obviously many impediments remaining -- e.g., the need to identify a suitable country for hosting the Court, deciding where non-Lebanese persons would serve sentences; whether the second UNSCR (under Chapter VII) would require cooperation of all states, or just of a particular state or states; whether it is feasible to have one trial for all defendants (whether or not actually in custody); whether Lebanese parliamentary approval would actually be forthcoming. Both the Lebanese and UN teams indicated that the project is off to a good start, and we share that assessment. There still are, however, quite a few legal and political issues to be resolved and the time table set for completing the steps to establish the Court (June 15) may be too ambitious. End Comment.
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